

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of American Canyon for Approval to Construct a Public At-Grade Crossing of the California Northern Railroad Track, Located in Napa County, State of California.

Application 01-09-021
(Filed September 13, 2001)

Application of the City of American Canyon for Approval to Construct a Public At-Grade Crossing of the California Northern Railroad Track, at South Napa Junction Road, Located in the County of Napa, State of California.

Application 05-05-014
(Filed May 6, 2005)

**DECISION GRANTING EXTENSION OF TIME FOR
CONSTRUCTION OF AN AT-GRADE CROSSING****1. Summary**

Today's decision grants the petition of the City of American Canyon (City) for modification of Decision 10-11-014. By granting the petition, today's decision (1) extends for two years the time within which the City is authorized to construct a specific at-grade crossing, and (2) describes the procedure for the City to follow in case a further extension is needed.

2. Historical Background

For over a decade, the City of American Canyon (City) has planned to construct a public at-grade crossing to replace an existing private crossing over the California Northern Railroad at South Napa Junction Road in Napa County. California Northern, the affected operating railroad, leases the rail line from the owner, Union Pacific. The crossing was and is an element of the City's adopted General Plan Circulation Element.

A detailed review of the causes of delay is unnecessary. Chiefly, the City's development plans, in particular its "Town Center" project, have changed in response to the withdrawal of the original 100-acre Town Center development plan. The City concluded that a new development plan with an expanded Town Center was needed for project feasibility. The expansion of the planned Town Center required approval by voter initiative and by the Napa County Local Agency Formation Commission.

The City has also had to revise its General Plan. In part, the revisions are intended to help ensure the City can avail itself of State and Federal transportation funding for improvement of State Route 29 and the related connection to South Napa Junction Road. The revisions also serve to implement provisions of recently enacted State Law.¹

¹ Relevant statutes include the California Global Warning Solutions Act of 2006 (Ch. 488 of Stats, 2006) and the California Complete Streets Act (Ch. 657 of Stats. 2008). Regarding the latter statute, the City has adopted a "Complete Streets Policy" and is in the environmental review process of its "Bicycle Master Plan."

3. Procedural Background

The Commission first granted authority to construct the South Napa Junction Road crossing in Decision (D.) 06-09-016. That decision resolved two consolidated applications (Application (A.) 01-09-021, and A.05-05-014). It did so by approving a settlement between the City and both of the involved railroads (California Northern and Union Pacific).²

D.06-09-010, at 7-10, summarizes the material provisions of the settlement for the Commission's purposes. In the context of the present petition, the key provisions are that (1) the City would convert into public at-grade crossings the existing private crossing at South Napa Junction Road and another existing private crossing at Donaldson Way; and (2) certain switching facilities of California Northern would be relocated.³ D.06-09-016 (Ordering Paragraph 13) also specifies that the authority to construct would expire if not exercised within two years of the decision's effective date, i.e., by September 2008.

Economic conditions in California, and in the nation generally, began to deteriorate shortly after issuance of D.06-09-016. In 2008, the declining housing market led to withdrawal of the proposed 100-acre Town Center project that was the predicate for the South Napa Junction Road crossing. The City determined that it should reconsider its development plans. Given these changes in

² Two developers, not parties to the applications, joined in the settlement and undertook certain responsibilities under the settlement. D.06-09-016 adopted the settlement without modification, and incorporated "to the extent of the Commission's jurisdiction" the terms of the settlement within the order. (See D.06-09-016, Ordering Paragraph 1.)

³ As we will discuss later, the settlement provisions regarding construction the Donaldson Way and relocation of the California Northern switching facilities were both carried out by the end of 2007.

circumstances, the City requested, from the Commission's Executive Director, a four-year extension of the authority to construct.⁴

The Executive Director rejected the request for a four-year extension but instead granted a two-year extension. The Executive Director also stated that if no further extension were granted prior to the new deadline, the City would have to file a new application so that the Commission could re-evaluate the need for this crossing in light of current facts.

The City continued to take many steps to update and proceed with its development plans. (See Historical Background above.) However, the projects that would necessitate the South Napa Junction Road crossing remained on the drawing board, and in July 2010, the City petitioned the Commission to modify D.06-09-016 by granting a further two-year extension beyond that granted by the Executive Director.

In D.10-11-004, the Commission granted the requested further extension but expressed great misgivings about doing so. The Commission noted that, given the continuing economic uncertainty, the City could not assure the Commission the Town Center project (including the crossing construction) would go forward within the timeframe of the latest extension. Furthermore, the Commission stated that the passage of the time could materially affect both the anticipated public benefit from the project and the analysis or assumptions underlying the original authorization. Therefore, the Commission ordered the City either to construct the crossing by the new deadline (November 19, 2012) or

⁴ The request, by correspondence dated August 11, 2008, was timely.

to file a new application for authority to construct if the City believed the crossing still to be needed.

In lieu of such an application, the City filed the petition that we resolve in today's decision. The petition asks us to modify D.10-11-004 by granting the City a further two-year extension of authority to construct the South Napa Junction Road crossing. In its petition and in subsequent filings in support of the petition, the City represents that the need, the engineering plans, and the various studies performed for the crossing remain valid despite the passage of time since the City first sought authority to construct the crossing.

4. Discussion

As explained below, we have decided to grant the extension substantially as requested by the City. We first discuss how the City has satisfied the concerns we expressed in D.10-11-004 about why a further extension might be problematic. Next, we discuss additional considerations that might lead us to reject or specially condition the requested extension; we find those considerations do not pertain to the circumstances presented here. Finally, we provide guidance to the City, the affected railroads, and our staff on how to proceed in the event that continuing economic problems or other circumstances beyond the City's control prevent construction of the crossing before the end of this extension.

4.1. The Passage of Time Has Not Affected the Need or the Design for the South Napa Junction Road Crossing as Originally Authorized

When the Commission grants authority to construct a project, it does so on the premise that there is a public need that the project will serve.

Consequently, the Commission is concerned that the project be diligently pursued and completed within a reasonable time. Our usual practice is to attach a deadline for the completion of a construction project, and we did so here. We should not extend that deadline without consideration of the impact of the extension on the public need that the project was intended to address.

Also, with the passage of time, circumstances may change, such that the Commission should re-consider the location, design, or even the need for the project.⁵ For all of these reasons, the Commission should not lightly grant an extension request, particularly where (as here) the request comes at the end of a series of such extensions.

Although the City filed a petition for another extension rather than a new application (as contemplated in D.10-11-004), we will look beyond the form to the substance of the City's showing in support of the extension. We have concluded that the showing, which is commendably systematic and detailed, satisfies our concerns.

⁵ Sometimes, a project actually should be cancelled or substantially modified due to changes since the project was approved. In this situation, termination of the project or requiring a new application may be more reasonable than granting a long series of fruitless extensions.

Regarding need for the project, the City's General Plan contains provisions that, among many other things, establish how demand for growth will be accommodated. Under the General Plan, growth may occur in an area that includes the South Napa Junction Road crossing. Given economic conditions, the timing of growth is uncertain, but the City represents that the crossing continues to be an element of the General Plan. What is clear, however, is that we would not compromise any current public need by granting the extension. The future public need continues to exist exactly as it did at the time we first approved this crossing construction.

The City also represents that the lack of development in the vicinity of South Napa Junction Road means that neither the analyses conducted nor the crossing plans drafted and approved in our first decision (D.06-09-016) need reconsideration. (See generally Petition at 11-13.) Specifically regarding traffic related impacts, the petition (at 13) reports no subsequent developments or changes in circumstances that would require reconsideration of the expected impacts at South Napa Junction Road, and no evidence to suggest a change over the next two years to the traffic forecast on which the Commission relied in D.06-09-016. Our Safety and Enforcement Division Staff has visited the crossing at the City's request in connection with this petition, and staff concurs that the construction designs are suitable to the site and in compliance with applicable Commission safety requirements.⁶

⁶ The staff visit is documented in the administrative record maintained by staff for this project.

4.2. The Commission Should Not Terminate the Authority to Construct or Impose Special Conditions on the Extension

Apart from the concerns that we discussed in Section 4.1 above regarding construction delays in general, there may be concerns with a specific project that would incline us either to terminate the authority to construct or to impose additional conditions in granting an extension. In the context of the South Napa Junction Road crossing, two such concerns come to mind.

First, if an applicant is unprepared or does nothing to pursue the authority after it is granted, the Commission may consider whether the application was premature. If so, the Commission may allow the authority to lapse without prejudice to a new application at such time as the applicant is ready and able to act on the requested authority. But here, the City has demonstrated all due diligence. For example, it has taken many steps to enhance the feasibility of the planned Town Center development (which the new crossing would complement). Moreover, the City has reported that various provisions of the settlement approved in D.06-09-016 have been carried out, including construction by the City of the new public at-grade crossing at Donaldson Way. We find the City has taken reasonable steps to fully exercise its authority to construct.

Second, if the construction delay allows a public nuisance or other unsafe condition to persist, the Commission may want to extend the authority but require interim measures to abate or mitigate the unsafe conditions. In other words, an extension order should not put the public at risk. But here, we find no evidence that requested extension would have such unintended consequences. The need for the South Napa Junction Road crossing derives from expected future development, not from an existing hazard. As noted earlier, our staff has

recently visited the site and reports no safety concern at this time. We find that granting an extension of the authority to construct the South Napa Junction Road crossing, as initially authorized in D.06-09-016, does not compromise public safety.

4.3. If Yet Another Extension Request Becomes Necessary, the City Should Follow Specific Procedures to Prepare and Present Its Request

Both the Commission and the stakeholders hope the South Napa Junction Road crossing is constructed without further delay and within the two year timeframe adopted in today's decision. Realistically, economic and other factors beyond the City's control may frustrate that hope yet again. If the City continues to regard the crossing as necessary, then we will again have to decide between a new application and an extension, perhaps subject to new conditions. Therefore, we provide the following guidance to the City and other stakeholders on the procedure and showing appropriate to a petition to further extend this authority.

No later than 120 days before expiration of the extension in today's decision, the City must submit a status report on the crossing construction to the Director of the Safety and Enforcement Division, and must serve a copy of the status report on California Northern and Union Pacific. If the City expects that construction will be complete within the time remaining in the extension, the status report should so state. If the City does not expect to complete construction within that time, the status report should so state, and should describe the City's intention regarding the future of the project. If the City intends to petition for another extension, the status report must contain information on which the City believes the Commission may rely in considering the petition. Such information must include, but is not limited to, the types of information discussed in today's

decision. The status report must expressly address any impacts on public safety arising from the construction delay.

In conjunction with the status report, the City must arrange a site visit with our railroad crossing staff. In addition, staff may request additional information from the City relevant to the site and the crossing plans, and the City must provide the additional information within a reasonable time.

Staff should raise with the City any concerns staff has with the status report or with further extension of the construction authority. We do not set a deadline, but staff should raise its concerns in a timely fashion, such that the City has a reasonable opportunity to address and resolve them prior to filing its petition for extension.

Categorization and Need for Hearing

These applications were originally categorized as ratesetting. The petition for modification does not affect the category. The petition is unopposed; no hearing is necessary.

Comments on Proposed Decision

Today's decision grants the requested relief in an uncontested matter. Therefore, the 30-day period for public review and comment is waived, as authorized by Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Steven Kotz is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Despite the passage of time since the City first sought authority to construct the proposed crossing at South Napa Junction Road, the need for that

crossing and the relevant engineering plans and other studies remain valid. The need for the crossing is premised on future development, consistent with the City's General Plan; this future public need continues to exist exactly as it did at the time we first approved construction of this crossing.

2. Granting an extension to construct the crossing does not compromise public safety or any current public need. We find no evidence that the extension allows any public nuisance or unsafe condition to persist.

3. The City has taken reasonable steps to exercise its authority to construct and comply with the settlement approved in D.06-09-016, including constructing the new public at-grade crossing at Donaldson Way.

4. Factors beyond the City's control, including prevailing economic conditions, may cause further delay of the construction of the crossing.

5. If an extension is needed beyond that granted in today's decision, a reasonable showing to support the further extension is described in Ordering Paragraph 2 and 3.

Conclusions of Law

1. The City's request for an extension of time to construct the crossing is reasonable. The Commission should not terminate the authority to construct or impose special conditions on the extension at this time.

2. Construction of the South Napa Junction Road crossing, as authorized by D.06-09-016 and subject to the conditions set forth in that decision, will promote the public health, safety, comfort, and convenience, consistent with §§ 451 and 1202 et seq. of the Public Utilities Code.

3. Today's order should be made effective immediately, and these proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The City of American Canyon's request for an extension of two additional years to construct a public at-grade crossing at South Napa Junction Road is granted. The City must either complete the construction of the crossing by the date two years after the effective date of today's decision or comply with the procedures described above and in Ordering Paragraphs 2 and 3, if a further extension is desired.

2. No later than 120 days before the expiration of the extension, the City of American Canyon (City) must submit a status report on the crossing construction to the Director of the Safety and Enforcement Division and must serve copies of this report on California Northern Railroad and Union Pacific. The report must address whether the City expects the crossing to be completed before expiration of the extension, and if not, the City's intention regarding the future of the crossing project. If the City intends to petition for a further extension, the report must provide information on which the City believes that the Commission may rely in considering the petition, including the types of information discussed in today's decision and an express analysis of any public safety impacts of the construction delay.

3. In conjunction with the status report, the City must arrange a site visit with our railroad crossing staff and provide any additional information that staff requests about the site and the crossing plans. Staff should raise any concerns in a timely fashion so that the City has a reasonable opportunity to address and resolve them prior to filing any further petition for extension.

4. Application (A.) 01-09-021 and A. 05-05-014 are closed.

This order is effective today.

Dated _____, at San Francisco, California.